

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

CITY OF JEFFERSON
Greene County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2010-AQ- 45
NO. 2010-SW- 38

TO: Craig Berry, Mayor
City of Jefferson
220 N. Chestnut Street
Jefferson, Iowa 50129

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the City of Jefferson for the purpose of resolving the air quality and solid waste violations which occurred at the Jefferson Airport. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Thad Nanfity, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code

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(IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

The City of Jefferson neither admits nor denies the Statement of Facts and enters into this administrative consent order for settlement purposes only.

1. The City of Jefferson owns the Jefferson Airport located east of town. Stott Aerial Spray, Inc. operates an aerial spraying operation at the Jefferson Airport via a lease agreement.

2. On August 18, 2009, DNR Field Office 4 received a complaint regarding unreported chemical spills at the airport and alleged that chemical jugs were being burned in a hole at the airport. The complainant observed airplanes leaking and Lorsban spilled on the south side of the Jefferson Airport ramp. The complainant stated that unrinsed chemical jugs were burned in a hole at the east end of the runway and the runway turns red from the chemicals when it rains.

3. On September 1, 2009, Ryan Young and Thad Nanfito, DNR Field Office 4 environmental specialists investigated the complaint. During the investigation, Mr. Young and Mr. Nanfito observed a variety of chemical containers and burned remnants of chemical containers in an excavated burn area located on the east end of the airport property. Mr. Young and Mr. Nanfito spoke to the airport manager who confirmed that the burning activities had been performed by Stott Aerial Spray, Inc. The field office personnel informed the airport manager that the burning must cease immediately. The field office personnel also observed evidence of an unreported spill south and west of the terminal. They noted a stained area on the concrete and the airport manager stated that Stott Aerial Spray, Inc. had caused the spill and washed the material into a subsurface drain. The airport manager also informed the field office personnel that other spills have occurred in the same area and have been allowed to run into the grassed area to the south.

4. On September 30, 2009, DNR issued a Notice of Violation letter to the City of Jefferson for the open burning violations as well as the failure to report a hazardous condition. The letter required the City of Jefferson to submit a site assessment plan to DNR Field Office 4 prior to the initiation of the actual site assessment. The plan was to be approved by the DNR and was to be submitted by November 15, 2009. The assessment was to be conducted to indicate the extent and levels of contamination at the airport property. The letter also informed the City of Jefferson that the matter was being referred for further enforcement. A similar Notice of Violation was also issued to Stott Aerial Spray, Inc. on the same day.

5. On October 9, 2009, Mr. Nanfito returned to the airport to collect samples of the spill area. During the visit, Mr. Nanfito observed areas of stained grass south of the Stott Aerial Spray, Inc. loadout area, indicating that chemicals had been allowed to run off into the

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grass. Mr. Nanfita also collected a composite sample of the soil. The laboratory results indicated contamination consistent with spills of chlorpyrifos and pyraclostrobin, both found in aerial spraying chemicals.

6. In later October 2009 and throughout November 2009, the City of Jefferson and the airport began working with Geode Environmental in conducting the assessment as required by the Notice of Violation letter. The City of Jefferson in coordination with its consultant and DNR Field Office 4 is completing the assessment.

7. The City of Jefferson had been previously informed of the open burning and solid waste disposal regulations in the state of Iowa. On May 22, 2000, DNR Field Office 4 sent an informational letter to the City of Jefferson, as well as all incorporated communities in the DNR Field Office 4 region. The letter discussed the open burning and solid waste disposal requirements and included a copy of the regulations.

IV. CONCLUSIONS OF LAW

The City of Jefferson neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes only.

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). As the owner of the airport, the City of Jefferson is responsible for the open burning that occurred at the airport. DNR Field Office 4 personnel noted evidence of the open burning of used chemical containers in a burn pit at the airport. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. As the owner of the airport, the City of Jefferson is responsible for the improper disposal of solid waste that occurred at the airport. DNR Field Office 4 personnel noted evidence of the open burning of used chemical containers in a burn pit at the airport. The containers were burned rather than being disposed of at an approved landfill. The above facts demonstrate noncompliance with this provision.

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V. ORDER

THEREFORE, it is hereby ordered and the City of Jefferson agrees to do the following:

1. City of Jefferson shall cease all improper solid waste disposal at City owned properties and shall take commercially reasonable measures to ensure that all parties operating on City owned properties are operating in compliance with the solid waste disposal regulations;
2. City of Jefferson shall cease all non-exempt open burning at City owned properties and shall take commercially reasonable measures to ensure that all parties operating on City owned properties are operating in compliance with the open burning regulations;
3. City of Jefferson shall complete the airport site assessment and any necessary remediation associated with the chemical spills or the open burning. The City of Jefferson shall submit monthly reports to DNR Field Office 4 regarding the status of the assessment and the remediation. The reports shall be submitted until the remediation has been completed; and
4. City of Jefferson shall pay a penalty of \$2,500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$2,500.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit – Stott Aerial Spray, Inc. has gained an economic benefit by failing to properly dispose the chemical containers and by failing to properly contain the chemical runoff. However, the economic benefit received by the City of Jefferson is minimal and therefore economic benefit is not being assessed.

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Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Violations of the open burning and solid waste regulations threaten the integrity of the air quality and solid waste regulatory programs. Based on the above considerations, \$1,500.00 is being assessed for this factor.


Culpability – The City of Jefferson has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The open burning of chemical containers demonstrates a lack of control on the part of the City of Jefferson as the owner of the property. Additionally, the City of Jefferson had been previously informed about the open burning and solid waste disposal regulations. Based on the above considerations, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of the City of Jefferson. For that reason, the City of Jefferson waives the rights to appeal this administrative consent order or any part thereof.

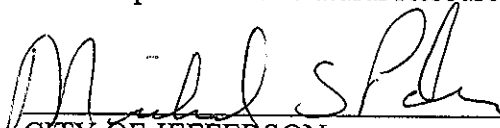
VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 18 day of
October, 2010.



CITY OF JEFFERSON

Dated this 12TH day of
OCTOBER, 2010.

Barb Stock (Con 10-6 Greene County); Kelli Book; DNR Field Office 4; EPA; V.I.C and VII.C.1